

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

PARTNERS IN BUILDING LP,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No.
	§	
CRAIG FUNCK, LEISA FUNCK, and TIM	§	Jury Trial Demanded
ELLIS	§	
	§	
Defendant.	§	
	§	

**COMPLAINT**

Plaintiff, Partners in Building, LP (hereinafter “Partners”), files this Complaint against defendants Craig Funck, Leisa Funck (“the Funcks”), and Tim Ellis d/b/a Ellis Architectural Designs (“Ellis”) (collectively the “Defendants”), and for its causes of action shows the following:

**THE PARTIES**

1. Partners is a Texas limited partnership with its principal place of business in Houston, Texas.
2. Defendants Craig and Leisa Funck are individuals residing in this District.
3. Defendant Ellis is an individual residing in this District.

**JURISDICTION AND VENUE**

4. This is an action for copyright infringement arising under the laws of the United States of America, codified at 17 U.S.C. §§ 101 *et seq.*
5. This court has exclusive federal jurisdiction over the subject matter of Plaintiff’s claim under 28 U.S.C. § 1338(a).

6. Each of the Defendants is subject to the personal jurisdiction of this Court because they reside in this District and solicit and transact business in this District on a regular basis, and because acts complained of herein occurred and are occurring in this District.

7. Venue in this District is proper under 28 U.S.C. § 1400(a) because Defendants reside or may be found in this District.

**FACTUAL BACKGROUND**

8. Partners is engaged in the business of creating, publishing, distributing, and advertising residential home designs and in constructing, marketing, advertising, and selling houses built according to such designs.

9. Three such building designs (which are known as “architectural works” under 17 U.S.C. § 101, and are hereinafter collectively referred to as the “Copyrighted Works”) that Partners has created are:

a. Plan 13088. Partners has registered their copyright in this work as evidenced by Certificate of Registration, Registration No. VA 2-012-694.

b. Nance Home. Partners has registered their copyright in this work, and others, as evidenced by Certificate of Registration, Registration No. VAu 1-096-094.

c. Funck Custom Home Plan. Partners has registered their copyright in this work as evidenced by Certificate of Registration, Registration No. VAu 1-280-656.

10. Each of the “Copyrighted Works” contains material wholly original to Plaintiff Partners that is copyrightable subject matter under 17 U.S.C. §§ 101 *et seq.*

11. Plaintiff Partners is the sole owner of all right, title and interest in and to the Copyrighted Works.

12. Partners contracted with the Funcks to, among other things, develop a custom home plan and used Plan 13088 and the Nance Home as a starting point.

13. In the summer of 2016, Partners prepared a preliminary custom home plan for the Funcks.

14. On July 7, 2016, Partners and the Funcks entered into a contract to build a home pursuant to the Funck Custom Home Plan. This contract provided, *inter alia*:

Buyer does not have, and shall not in future acquire, either ownership of the Plans or the right to use the Plans or to allow their use by any third party and Seller may use the Plans (or derivations or portions of the Plans) to construct other homes without limitation or restriction. Buyer acknowledges that, even though Buyer may pay Seller for the Plans, the Plans are unique to Seller and are (and shall always remain) the property of Seller. If Buyer does not, for whatever reason, proceed with construction of the Home, then Buyer shall return to Seller all construction drawings, elevations, floor plans, specifications and other depictions of the Home and any other product of Seller. Buyer shall, under no circumstance, allow the use of, or provide, any such Plans to any third person as Buyer acknowledges and agrees that all such Plans are copyrighted by Seller. ... Buyer acknowledges that the Plans are subject to copyrights owned by Seller. Any use of the Plans by Buyer for any purpose other than as described in this Contract is strictly prohibited and Buyer agrees to indemnify and hold Seller harmless from any claims, demands, losses, expenses, causes of action, court costs or attorneys fees arising out of Buyer's wrongful use of the Plans.

15. In November 2016, the Funcks terminated the contract. In response, Partners reminded the Funcks that the Funck Custom Home Plan and any plan design concepts or derivative works were the property of Partners and should not be used without written permission from Partners.

16. The Funcks did not return all “construction drawings, elevations, floor plans, specifications and other depictions” of the Funck Custom Home as they had promised to do. Instead, they retained possession of at least some such materials.

17. Ellis is a Houston area home designer that advertises his services at [www.ellishomedesigns.com](http://www.ellishomedesigns.com).

18. Ellis does business under the name “Ellis Architectural Designs.” However, Ellis is not and has never been licensed as an architect in Texas.

19. On information and belief, the Funcks are individuals who have directed, induced, and otherwise caused Ellis to copy the Funck Custom Home Plan for constructing their home at 27434 Blue Cedar Lane, Spring, Texas 77386 (the “Subject House”).

20. On information and belief, Ellis created copies or derivatives of the Copyrighted Works (the “Subject Designs”).

21. Partners has not licensed or otherwise authorized the Funcks or Ellis to use any of the Copyrighted Works.

#### **COUNT I: COPYRIGHT INFRINGEMENT**

(17 U.S.C. §§ 101 *et seq.*)

22. Partners realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 21 above.

23. The Funcks and Ellis have violated Partners’ exclusive rights in each of the Copyrighted Works (including the right to reproduce, right to prepare derivative works, and right to distribute) by copying, distributing, and/or constructing in the marketplace, architectural works, technical drawings, and nonpictorial representations

which were copied or otherwise derived from the Copyrighted Works, including the Subject House.

24. Pursuant to 17 U.S.C. § 504(b), Partners is entitled to recover from each defendant, jointly and severally, its actual damages suffered as a result of these infringements.

25. Pursuant to 17 U.S.C. § 504(b), Partners is entitled to recover all profits of each Defendant that are attributable to the infringement, including but not limited to the profits from the sale of any of the Subject Houses or otherwise arising from the use of any of the Copyrighted Works or derivatives thereof.

26. Alternatively, Partners is entitled to recover statutory damages pursuant to 17 U.S.C. § 504(c).

27. Pursuant to 17 U.S.C. § 502, Partners is entitled to preliminary and permanent injunctive relief to restrain copyright infringement of the Copyrighted Works, including but not limited to the further reproduction or distribution of infringing drawings or plans and the construction, marketing, sale, or rental of infringing structures.

28. Pursuant to 17 U.S.C. § 503(b), Partners is entitled to an order requiring the destruction or other reasonable disposition of all infringing copies found to have been made in violation of its exclusive rights.

29. Pursuant to 17 U.S.C. § 505, Partners is entitled to recover its costs of court and reasonable attorneys' fees.

**CONDITIONS PRECEDENT**

30. Partners generally avers that all conditions precedent to its rights of recovery have occurred or have been performed.

**JURY DEMAND**

31. Pursuant to Federal Rule of Civil Procedure 38, Partners demands trial by jury on all issues so triable.

WHEREFORE, Partners prays that defendants be cited to appear and answer, and that upon final trial that it have and recover from defendants as requested herein, that it have injunctive and destructive relief as requested herein, and that it have such and other relief as it may show itself to be entitled.

Date: August 8, 2017

Respectfully submitted,

By: /s/ Califf T. Cooper

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